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LAND USE COMMISSION  
STATE OF HAWAI'I

ADOPTION of ORDER	) Page 3
DR14-52 TRUSTEES OF BERNICE PAUAAHI BISHOP dba	)
KAMEHAMEHA SCHOOLS (O'ahu)	)
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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for an Adoption of  
Order and Hearing and Action at the Airport Conference  
Center, 400 Rodgers Blvd., Suite 700, Room #3  
Honolulu, Hawai'i, commencing at 10:15 a.m. on  
March 5, 2015, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
Certified Shorthand Reporter

## A P P E A R A N C E S

## COMMISSIONERS:

EDMUND ACZON  
BRANDON AHAKUELO  
NEIL CLENDENINN  
KENT HIRANAGA  
AARON MAHI  
CHAD McDONALD, (Chair)  
SANDRA SONG  
ARNOLD WONG

EXECUTIVE OFFICER: DAN ORODENKER  
CHIEF CLERK: RILEY HAKODA  
STAFF PLANNERS: SCOTT DERRICKSON/BERT SARUWATARI  
DEPUTY ATTORNEY GENERAL: DIANE ERICKSON

DR14-52 Trustees Of Bernice Pauahi Bishop dba  
Kamehameha Schools (O'ahu)

For the Petitioner: Jennifer Lim, Atty. at Law  
Onaona Thoene, Associate

For Sun Edison: Wren Wescoatt

For the City and County DPP: RICHARD D. LEWALLEN, ESQ.

For the State: RODNEY FUNAKOSHI,  
Director of Office of Planning  
LORENE MAKI

1 CHAIRPERSON McDONALD: (gavel) 'Morning.  
2 I'd like to call the State of Hawai'i Land Use  
3 Commission meeting to order. The first order of  
4 business is the adoption of meeting minutes from our  
5 February 18, 2015 meeting. Commissioners, do I have a  
6 motion to approve?

7 COMMISSIONER WONG: So moved.

8 CHAIRPERSON McDONALD: Moved by  
9 Commissioner Wong. Seconded by Commissioner Ahakuelo.  
10 Mr. Orodenger, could you please review with the  
11 Commission the tentative meeting schedule.

12 MR. ORODENER: Thank you, Mr. Chair.  
13 March 25th, Wednesday we have a video conference  
14 scheduled for Approval of the Order and Waiawa PV  
15 State Special Use Permit. I'm assuming that that  
16 matter passes today.

17 Wednesday April 8th and 9th is to be  
18 determined. In fact, Mr. Chair, the calendar is clear  
19 until May 28 when McClean Honokohau will be heard in  
20 Kona. And Wednesday June 10th Island Schools on  
21 Kaua'i.

22 CHAIRPERSON McDONALD: Thank you,  
23 Mr. Orodenger. Okay. Good morning. This is an  
24 action meeting on DR14-52 in the Matter of the  
25 Petition of the Trustees of the Estate of Bernice

1 Pauahi Bishop dba, Kamehameha Schools for Declaratory  
2 Order to Designate Important Agricultural Lands for  
3 approximately 9,171.161 acres at Kailua, O'ahu  
4 identified by TMK 1, 6-1-005 portion parcel 1, 6-1-006  
5 portion parcel 1, 6-1-007 parcel 1 6-2-009 portion of  
6 parcel 1, 6-2-10 portion parcel 1, 6-2-011 portion  
7 parcel 1, 6-2-001, Parcel 021 and approximately  
8 420.887 acres at Punalu'u, O'ahu identified by TMK  
9 Nos: (1) 5-3-001 portion of parcel 41; 5-3-003  
10 portion of parcel 1; 5-3-004 parcel 5; 5-3-004 parcel  
11 7; 5-3-004 parcel 13; 5-3-004 portion of parcel 18,  
12 and 5-3-004 parcel 19. Finally, 5-3-007 portion  
13 parcel 23.

14 Will the Petitioner please identify  
15 themselves for the record.

16 MR. CHIPCHASE: Yes, Chair. Good morning.  
17 Good morning, Commissioners. Cal Chipchase for  
18 Petitioner the Trustees of the Estate of Bernice  
19 Pauahi Bishop doing business as Kamehameha Schools.  
20 And Sidney Keliipuleole joins us in the hearing room.

21 CHAIRPERSON McDONALD: Good morning,  
22 Mr. Chipchase. Let me update the record. On February  
23 18, 2015 the Commission voted unanimously to grant  
24 Petitioner's Petition for Declaratory Order to  
25 designate Important Agricultural Lands. On that same

1 date the Commission received an initial draft of the  
2 Petitioner's Proposed Findings of Fact, Conclusions  
3 and Decision and Order.

4 On February 24, 2015 the Commission  
5 received a final draft of the Petitioner's proposed  
6 Finding of Facts, Conclusions of Law and Decision and  
7 Order. The Commission also received of the City and  
8 County of Honolulu Department of Planning and  
9 Permitting's notice they will not be attending the  
10 March 5th, 2015 hearing on this matter, but good  
11 morning, Tom.

12 MR. LEWALLEN: Good morning. (Laughter)

13 CHAIRPERSON McDONALD: Okay. I will now  
14 call those individuals who would like to provide  
15 public testimony on this docket. Seeing none,  
16 Petitioner do you have any comments at this time?

17 MR. CHIPCHASE: Just very briefly, Chair.  
18 And principally just to thank the Commission for its  
19 time and attention to this matter. We've submitted a  
20 lot of materials to the Commission, the agencies and  
21 the City submitted materials. We had an extensive  
22 site visit to both properties. And we spent  
23 considerable time in the hearing room reviewing the  
24 evidence. I appreciate all of those efforts.

25 The proposed Findings of Fact,

1 Conclusions of Law and Decision and Order that we have  
2 submitted is consistent with that evidence that was  
3 submitted to the Commission as consistent with the  
4 motion made and acted upon by the Commission.

5 I think the fact of that consistency is  
6 reflected in that neither the City nor the agencies  
7 have submitted any comments on the proposed Findings  
8 of Fact, Conclusions of Law and Decision and Order.  
9 We did confirm with the agencies before this hearing  
10 that they had no comment on it.

11 So accordingly we'd ask the Commission to  
12 adopt the proposed Findings of Fact, Conclusions of  
13 Law and Decision and Order as submitted. Thank you.

14 CHAIRPERSON McDONALD: Thank you,  
15 Mr. Chipchase. Commissioners, before you is the form  
16 of the Order granting the Petition in this Docket No.  
17 DR14-52. The form of the Order is the form submitted  
18 by the Petitioner with only technical and  
19 non-substantive changes. The Chair will entertain a  
20 motion at this time to approve the form of the Order  
21 in this matter. Commissioners, what's your pleasure?  
22

23 COMMISSIONER WONG: Chair, I move for the  
24 adoption of the Order.

25 CHAIRPERSON McDONALD: Motion by

1 Commissioner Wong. Do I have a second?

2 COMMISSIONER MAHI: Second.

3 CHAIRPERSON McDONALD: Seconded by  
4 Commissioner Mahi. Any discussion? Mr. Orodenger,  
5 please poll the Commission.

6 MR. ORODENER: Thank you, Mr. Chair. The  
7 motion is to adopt the Form of the Order.  
8 Commissioner Wong?

9 COMMISSIONER WONG: Aye.

10 MR. ORODENER: Commissioner Mahi?

11 COMMISSIONER MAHI: Aye.

12 MR. ORODENER: Commissioner Aczon?

13 COMMISSIONER ACZON: Aye.

14 MR. ORODENER: Commissioner Hiranaga?

15 COMMISSIONER HIRANAGA: Aye.

16 MR. ORODENER: Commissioner Ahakuelo?

17 COMMISSIONER AHAKUELO: Aye.

18 MR. ORODENER: Commissioner Song?

19 COMMISSIONER SONG: I'm abstaining 'cause  
20 I've not reviewed the entire record.

21 MR. ORODENER: Commissioner Clendeninn?

22 COMMISSIONER CLENDENINN: Aye.

23 MR. ORODENER: Chair McDonald?

24 CHAIRPERSON McDONALD: Aye.

25 MR. ORODENER: Commissioner Scheuer is

1 absent. Mr. Chair the motion passes with 7 ayes.

2 CHAIRPERSON McDONALD: Thank you,  
3 Mr. Orodenker. And thank you to Petitioner and best  
4 of luck with your endeavors with agricultural lands  
5 there.

6 MR. CHIPCHASE: Thank you, Chair. Thank  
7 you, Commissioners.

8 CHAIRPERSON McDONALD: We'll take a  
9 5-minute recess in place to get reorganized for the  
10 next agenda item. (recess)

11 We're back on the record. We'll now take  
12 up agenda items Nos. VI and VII simultaneously. This  
13 is a meeting on Docket No. SP15-405, Waiawa, PV LLC's  
14 to consider a new Special Permit Application DPP SUP  
15 Application No. 2014, SUP-3 to allow development of a  
16 47-megawatt photovoltaic energy generation facility  
17 and accessory uses and structures on lands rated Class  
18 B by the Land Study Bureau; Waipio, Ewa, O'ahu,  
19 Hawai'i Tax Map Key No. 9-5-003 portion of parcel 4.

20 Will the Applicant please identify  
21 themselves for the record, please.

22 MS. LIM: Good morning, Chair and  
23 Commissioners. This is Jennifer Lim representing the  
24 Applicant Waiawa PV, LLC, now known as Waipi'o PV,  
25 LLC. To my right is Wren Wescoatt who is the Hawai'i



1 Development Director for Waiawa, now Waipio PV, LLC.  
2 And to my left is Onaona Thoene, my associate.

3 CHAIRPERSON McDONALD: Good morning.

4 Thank you, Ms. Lim. On January 29, 2015 the  
5 Commission received the complete record of the City  
6 and County of Honolulu Planning Commission's  
7 proceedings recommending approval of the Applicant's,  
8 application for the Special Permit.

9 On February 19, 2015 the Commission  
10 received Applicant's proposed Findings of Fact,  
11 Conclusions of Law and Decision and Order based on the  
12 record of the Planning Commission of the City and  
13 County of Honolulu.

14 On February 24, 2015 the Commission sent a  
15 March 5th, 2015 LUC agenda notice to the parties and  
16 to the statewide and O'ahu mailing list. On  
17 February 26, 2015 the Commission received State Office  
18 of Planning's comments on this docket.

19 On February 27, 2015 the Commission  
20 received a copy of the Applicant's notice of certified  
21 change of name to Waipi'o PV, LLC; a Certificate of  
22 Amendment with request for the Commission to take  
23 official notice of the name change.

24 Before I go further, Commissioners, any  
25 disclosures on this docket at this time? Hearing

1 none, let me briefly describe our procedures for  
2 today. First, the Applicant will make its  
3 presentation. After completion of the Applicant's  
4 presentation we will receive any public comments from  
5 the Department of Planning and Permitting of the City  
6 and County of Honolulu. After completion of the  
7 County's comments we will receive any public comments  
8 from the State Office of Planning. After receiving  
9 public comments from the State Office of Planning the  
10 Commission will conduct its deliberations. Are there  
11 any questions on our procedures for today?

12 MS. LIM: No, Chair.

13 CHAIRPERSON McDONALD: I will now call any  
14 individuals wishing to provide public testimony on  
15 this docket. Seeing none, I'd also like to note that  
16 I'll be calling for short breaks from time to time for  
17 the benefit of our court reporter.

18 After completion of the public testimony,  
19 which there is none, we will commence with the case in  
20 chief which is agenda No. VII. Before we begin let me  
21 address the Petitioner's request that the Commission  
22 officially notice the name change for Petitioner based  
23 on correspondence received on February 27, 2015.

24 Pursuant to section 15-15-63(k), Hawaii  
25 Administrative Rules, the Land Use Commission may take

1 official notice of matters as may be judicially  
2 noticed by the courts of the state of Hawai'i.  
3 Official notice may also be taken of generally  
4 recognized technical or scientific facts within the  
5 Commission's specialized knowledge when parties are  
6 given notice either before or during the hearing of  
7 the materials so noticed and afforded the opportunity  
8 to contest the facts so noticed.

9           Hawai'i Rules of Evidence HRE 201(f)  
10 describes Hawai'i's courts -- describes when Hawai'i  
11 courts do take judicial notice at any stage, excuse  
12 me, of the proceeding when the fact is not subject to  
13 reasonable dispute and that's either one. Generally  
14 known within the territorial jurisdiction of the court  
15 or two, capable of accurate and ready determination by  
16 sources who's accuracy cannot reasonably be  
17 questioned.

18           The change of name request and supporting  
19 documentation was received by our office on  
20 February 27, 2015, prior to today's hearing and served  
21 on all interested parties. Did the County or OP have  
22 any objections?

23           MR. LEWALLEN: The County has none.

24           CHAIRPERSON McDONALD: Mr. Funakoshi, any  
25 objections to the change in the name request?

1 MR. FUNAKOSHI: None.

2 CHAIRPERSON McDONALD: There being no  
3 objection the Chair takes official notice and  
4 recognizes the change in name of Petitioner to now be  
5 known as Waipi'o PV, LLC.

6 MS. LIM: Thank you, Chair.

7 CHAIRPERSON McDONALD: Ms. Lim, are you  
8 prepared to proceed with your presentation?

9 MS. LIM: Yes.

10 CHAIRPERSON McDONALD: Please proceed.

11 MS. LIM: Thank you. And, again, thank  
12 you to the Commission for giving us a chance to come  
13 before you today. I may be wrong about this. I don't  
14 know if this is the first Special Permit or Special  
15 Use Permit that this Commission has heard. But I  
16 would say that it's definitely the first Special Use  
17 Permit under Act 55 that the Commission has heard. So  
18 it's an honor. It's also exciting for us to be able  
19 to present the case to you.

20 I don't want to be too pedantic and try to  
21 explain what I'm sure your attorney already explained  
22 to you, and the Director and LUC staff, about the Land  
23 Use Commission's role in the Special Permit  
24 proceeding. But I'll just spend a minute or so on  
25 that and then I'll spend a little bit more time about

1 Act 55 so that then when we describe our case in chief  
2 it will hopefully matter to you. And if there are any  
3 questions at any time, of course, the Commission will  
4 just stop me and I hope I can answer those questions.

5 The State Land Use Commission's role in  
6 the Special Use Permit is critical. It's essential  
7 but it's also a fairly narrow role. And that is  
8 because under 205(6) the initial, and in many cases,  
9 the only decision-making body in a Special Permit  
10 proceeding is the applicable County Planning  
11 Commission. So those of you who have served on the  
12 Planning Commission have probably seen a lot of  
13 Special Permit applications.

14 Therefore uses that are considered unusual  
15 and reasonable within the Agricultural District or the  
16 Rural District. And often those uses stop at the  
17 Planning Commission. It's either a 'Yes' or a 'No'.  
18 And they never need to come up to you folks.

19 Where they do need to come up to you folks  
20 is if it's for a land area that's greater than  
21 15 acres. In this case the land area in question is  
22 about 308 acres. So we clearly need to come up to you  
23 folks. But just like every other special permit  
24 proceeding the guts of the case, the meat of the  
25 matter, the evidence, the whole in depth analysis was

1 done down below at the Planning Commission.

2 So to kind of put that into context. When  
3 you folks are presented with a District Boundary  
4 Amendment proceeding from the day that your executive  
5 director offers, "This thing is accepted for  
6 processing." Okay. So all those criteria just even  
7 getting it through the door have been met, you've got  
8 365 days to make a decision. You can even extend that  
9 by, I think by 90 days. Okay.

10 The difference with a Special Permit is,  
11 like I said, all the detailed work is down below at  
12 the county level. And then once it comes up to the  
13 LUC there's a 45-day time period for this Commission  
14 to make its decision on whether or not to agree with  
15 what the Planning Commission did or to add additional  
16 conditions that you folks feel are necessary for more  
17 protective reasons or, regrettably, to send it back  
18 down if you think that there's information missing.

19 So the difference of a 365-day analysis  
20 versus a 45-day analysis I think kind of shows the  
21 level of detail that is expected at the Planning  
22 Commission level on a Special Permit versus the level  
23 of details that this Land Use Commission is expected  
24 to exercise on a Special Permit.

25 In other words, all of the detailed work

1 is done down below. But we're here to present the  
2 evidence and sort of highlight those details to you.  
3 So that's the Special Permit's big picture. What's  
4 unique about Act 55, and again this is the first time  
5 I believe you've seen -- I know that you've seen an  
6 application under Act 55 -- is that the Legislature  
7 only passed this law last year.

8           Again, Special Permits it's unusual  
9 reasonable uses within the State Agricultural or Rural  
10 District. But usually what that means is things like  
11 quarrying operations or landfills or maybe, you know,  
12 small retreat or wellness center.

13           They're activities that tend to be  
14 commercial activities that are not, clearly not within  
15 what's typically understood to be agricultural  
16 activities. And that's why people seek a Special  
17 Permit. It's not worth trying to get a District  
18 Boundary Amendment. But the Legislature recognizes  
19 that special consideration should be given before  
20 allowing those kind of activities.

21           What's different about this kind of  
22 project is it's a solar farm project. Solar farm  
23 projects are permitted in the State Land Use  
24 Agricultural District. And solar farm projects are  
25 permitted in the State Land Use Agricultural District

1 even when the soil classifications are B, which is the  
2 Land Study Bureau classifications are B, which is what  
3 we have here. But until Act 5 came along -- and again  
4 this only got enacted this last legislative session,  
5 there's a limitation on how large that solar farm  
6 Project could be.

7           So it used to say that: Solar energy  
8 facilities could be placed in areas where LSB soil B  
9 or C classification existed, as long as the solar  
10 facilities didn't occupy more than 10 percent of the  
11 acreage or 20 acres of land, whichever is less. So  
12 clearly a 447 megawatt solar project would not have  
13 been able to operate under that law.

14           Under Act 55 the Legislature said, "that's  
15 still a law unless you get a Special Permit done  
16 pursuant to Chapter 206 Section 6." So that's the  
17 Special Permit process. So we could not have sought a  
18 1, Special Permit a year ago. Act 55 allows that  
19 opportunity now.

20           However, Act 55 also says you've gotta get  
21 a Special Permit, which means go through the analysis  
22 on: Is it unusual? Is it reasonable? What kind of  
23 effects it is going to have on that neighboring  
24 properties? Little more detail on what we'll talk  
25 about in a few minutes.



1 But what Act 55 really did is, it says  
2 that when you're getting that Special Permit you need  
3 to do three things: 1. The area that's occupied by  
4 the solar energy facility also has to be made  
5 available for compatible agricultural activities. And  
6 it has to be made available for those agricultural  
7 activities at a lease rate that's 50 percent or less,  
8 at least 50 percent below the fair marked value of  
9 agricultural lease rates.

10 2. The solar energy facility has to be  
11 backed up by proof of financial security that the  
12 facility can be decommissioned at the end of the  
13 useful life of the solar energy facility. So you  
14 can't have a developer just throw the stuff up there  
15 and then get outta town.

16 There's gotta be -- either that developer  
17 or somebody else but there's gotta be money to back up  
18 the fact that that stuff will be removed and that the  
19 land will be restored substantially to the same  
20 condition that it was in when the solar energy  
21 facility got created.

22 That needs to be proof that each county  
23 Planning Commission has the opportunity to determine  
24 what adequate proof will be. And through *our* process  
25 we did have the County Planning Commission with the

1 Planning Department determine what that adequate  
2 financial security will be. And we'll talk about that  
3 in a minute.

4           The third criteria, so again you've gotta  
5 make your lease rent A. to make it available for  
6 farmers.

7           B. Make it at a lease rent that at  
8 50 percent of what everybody else would be charging.

9           C. Make sure that you've got financial  
10 security to decommission the facilities. And then Act  
11 55 also explains what decommissioning means, okay?  
12 Which is: Remove all equipment related to the solar  
13 energy facility within 12 months of the conclusion of  
14 the operation. Restore the disturbed earth in  
15 substantially the same physical condition as existed  
16 prior to the development of the solar energy facility.  
17 So that's the sort of the package of goods that Act 55  
18 did.

19           So unlike the Special Permit for a  
20 quarrying operation or a small hotel or something like  
21 that, this Special Permit in a way clearly enhances  
22 agricultural activities because it's saying: You want  
23 to be able to put solar panels there, then you better  
24 make sure that you're really making this land even  
25 *more* available than it is today for agricultural

1 activities.

2           So those were the criteria that we had to  
3 meet. And that is what the Planning Commission, the  
4 City and County of Honolulu Planning Commission  
5 determined that we did meet that criteria. And they  
6 put conditions on that approval to make sure that  
7 those legal requirements would be met. So that's Act  
8 55 in a nutshell. Right now the land is used for  
9 cattle grazing.

10           And, again, the record, which you all  
11 received from the Planning Commission late in January,  
12 the record reflects that the land's used for cattle  
13 grazing. I think there's maybe 130 some odd head of  
14 cattle on the property.

15           And the Applicant intends to make the land  
16 available for sheep farming. Sheep farming is less  
17 land intensive, less water intensive. Apparently  
18 there can be a good business in sheep farming.  
19 There's a high demand. I always think of the land as  
20 very expensive. Maybe this will change things. But  
21 the land had been, at the time of the application was  
22 submitted and it continues to be under cattle grazing.  
23 The land was owned by Castle & Cooke for years.

24           The land was owned by Castle & Cooke. And  
25 if you did I'm sure if you looked through the record

1 you noticed that Castle & Cooke had originally signed  
2 off on the application.

3 The Applicant's always been Waipi'o PV  
4 LLC. Originally the land was owned by Castle & Cooke.  
5 Castle & Cooke always knew that the land was going to  
6 be used for this solar farm purpose. And they  
7 provided the owner authorization for Waipio PV, LLC to  
8 process the application.

9 Waipi'o PV, LLC knew that they were, during  
10 the permitting process of the City were in the process  
11 of purchasing the land from Castle & Cooke. In fact,  
12 I know this gets a little confusing, not really  
13 confusing, but there's just a lot of names. It was  
14 owned by Castle & Cooke. The Applicant was Waiawa PV  
15 LLC. Then Castle & Cooke gave the owner  
16 authorization.

17 The actual company that purchased the land  
18 from Castle & Cooke is a company called Renewable  
19 Lands Holdings. We did file a fee owner authorization  
20 consistent with the LUC requirements for renewable  
21 land holdings. That closing took place at the end of  
22 December. So we had two hearings at the City Planning  
23 Commission, a December hearing and a January hearing.

24 So we made sure that we told the  
25 Commission right now as we sit here before you today

1 on December 17th property's owned by Castle & Cooke.  
2 But when we're back to you in the first week in  
3 January it's going to be all owned by Renewable  
4 Landholdings. That's why we filed that second fee  
5 owner authorization.

6 Renewable Landholdings is a company that  
7 is affiliated with Waiawa PV LLC/Waipio PV LLC.  
8 That's the entity that will own the land while Waiawa  
9 PV LLC is actually the entity that's going to develop  
10 the Project.

11 The other thing that we knew at the  
12 Planning Commission stage, but it had not closed by  
13 the time that we actually were at our final hearing at  
14 the Planning Commission. So we could only talk about  
15 it in the record. We couldn't actually submit some  
16 documentation was that First Wind was being purchased  
17 by SunEdison. Many of the Commissioners here may be  
18 familiar with the SunEdison Company has a large  
19 reputation.

20 COMMISSIONER SONG: Mr. Chairman, I have a  
21 question. I just want to make certain that all of  
22 these statements Ms. Lim are basically restating what  
23 it was at the commission level. Because as I  
24 understand it, and you clearly explained this  
25 Commission's role is to make a decision based on the

1 record. Today you're not giving us any new evidence,  
2 is that correct?

3 MS. LIM: That's correct, Commissioner  
4 Song.

5 COMMISSIONER SONG: You're recapping what  
6 was done at the commission level.

7 MS. LIM: That's correct.

8 CHAIRPERSON McDONALD: Thank you,  
9 Ms. Song.

10 MS. LIM: And so to that point, as I was  
11 saying we were at the Planning Commission stage, and  
12 into the written direct testimony that was filed with  
13 the Planning Commission. We indicated that that sale  
14 from First Wind to SunEdison was pending, but it  
15 hadn't happened. So that is why, in fact, because  
16 SunEdison has a Waiawa project, Waiawa PV they did the  
17 name change to Waipio PV just to sort of reduce  
18 confusion.

19 So in any event that's the history about  
20 the land ownership, and the players who have been  
21 involved. The people haven't really changed. It is  
22 all tracked both in the filings that were at the  
23 Planning Commission as well as the transcripts of  
24 those two hearings.

25 So we wrapped up things at the City

1 Planning Commission with two hearings. And they were  
2 pretty comprehensive hearings. We had the first  
3 hearing on the 17th. The planning director had not at  
4 that point prepared his findings, conclusions, and  
5 recommendation.

6 Short before the 17th we had filed a whole  
7 lot of evidence, redirect testimony, additional  
8 documents that all of this was in the record that was  
9 submitted to this Commission from an engineer, from  
10 the Project manager, from an archaeological consultant  
11 a cultural impact consultant, interconnection  
12 consultant loads of evidence just to make sure that  
13 when the planning director was writing that report and  
14 when the Planning Commission ultimately made its  
15 decision and had all that in front of it.

16 The Planning Director's report came out, I  
17 believe, it was on December 30th or December 31st. We  
18 came back to the Planning Commission on January 7th.  
19 The Commission at that point had the Director's  
20 recommendation, had our exceptions to the  
21 recommendation, which was really just to clarify and  
22 put a little more detail in the citations to what  
23 Director Atta had provided to the Commission.

24 And on January 7th the Planning Commission  
25 approved the Director's report as modified by our

1 exceptions as further modified by the discussion that  
2 took place on January 7th. So that was a unanimous  
3 approval.

4           And then the City, I think, quite  
5 expeditiously, got everything all put together, and  
6 got it up to the LUC, I believe on the 26th or on the  
7 29th. The letter from the City was on the 26, I  
8 believe. And then the LUC has taken consistent, with  
9 what we discussed earlier, had taken very timely  
10 action on the matter from the day the full record was  
11 transmitted to the LUC to the day that we're here is  
12 well within what the statute provides for. So there's  
13 no concerns on that.

14           The only concern that we would have is  
15 because this is another one of those low cost waiver  
16 projects that will be taking advantage of the Federal  
17 Investment Tax Credits that many of these  
18 Commissioners probably heard about. The Project  
19 actually has to be up and running before the end of  
20 2016 in order to take advantage of that 30 percent tax  
21 credit.

22           So that's not this Commission's problem to  
23 solve by any means. It just means that we as the  
24 Applicant needs to hopefully keep moving through this  
25 process as quickly as we can so that we can actually



1 meet that deadline and have the Project operating by  
2 the end of 2016.

3 I can describe now anything that you'd  
4 like about the Project. I feel like I've been  
5 speaking so long. Do the Commissioners have any  
6 questions or should I go into describing the Project  
7 itself?

8 CHAIRPERSON McDONALD: I think it's best  
9 that you go into the Project description, Ms. Lim,  
10 before we have any questions.

11 MS. LIM: Thank you. So the document that  
12 I'll refer to, only because it's maybe the easiest and  
13 most comprehensive, is the proposed Findings of Fact  
14 that we filed with this Commission on the 19th. We  
15 took great pains in the proposed Findings of Fact to  
16 keep it track exactly with the record as provided by  
17 the City. So what you'll see in there is the Project  
18 that's proposed is a 47-megawatt Project.

19 And it's in an acreage of about 308.8  
20 acres of land. So a 47-megawatt Project means that  
21 there's going to be 47 blocks of panels. As I said  
22 it's going to be with this 309, 309-acre of land.  
23 There's a chunk of land, maybe 4 acres or so, sort of  
24 in the middle of the property that is absolutely *not*  
25 part of this Special Permit Application.

1           That property is, although it's owned by a  
2 renewable land multi-use, is not part of the Special  
3 Permit Application. And at some point in the future  
4 Castle & Cooke may -- the property may be conveyed to  
5 Castle & Cooke. And they'll do a reservoir on there.

6           But in any event, this Project isn't  
7 seeking for approval to the reservoir and that  
8 property is not part of the Special Permit  
9 application. The 47-megawatt Project is going to  
10 generate -- to put it into context -- about enough  
11 power for 13,000 homes a year in Honolulu. And the  
12 cost, as I mentioned earlier, this is one of the low  
13 cost waiver projects that the PUC still has to  
14 approve -- but HECO was looking for low cost renewable  
15 energy projects at a certain price. And this was one  
16 of those projects.

17           Waipi'o PV LLC bid and the price that has  
18 been agreed to is 13.75 cents per kilowatt hour. And  
19 to give that some -- (off mic) thank you for that  
20 correction. Excuse me. To put that into some meaning  
21 I believe that the price right now that HECO get power  
22 at is about 19.7 cents per kilowatt hour. So it's  
23 about a 6 cents difference per kilowatt hour. And  
24 that's what will generate the savings of about a  
25 \$150 million over the course of 30 years if this

1 Project gets to go forward.

2           So as we said there'll be 47 one megawatt  
3 panels. They're fixed, meaning that they're a fixed  
4 tilt, meaning that they're not on that -- they don't  
5 track the sun. They stay in one place. The sun comes  
6 shining down on them.

7           There's not lubricants. There's not  
8 moving parts. They're just fixed panels. While the  
9 panels are there, once that's established, perimeter  
10 fencing will go around the entire Project. And then,  
11 as we discussed before, the property has to be made  
12 available for compatible Ag uses.

13           So the Applicant has a Letter of Intent  
14 with an entity called Tin Roof Ranch that's  
15 interested, very interested in doing sheep farming.  
16 That's been the main focus. There was a study done,  
17 is included in all the application material, about the  
18 sheep farming work on solar farms. The determination  
19 is yeah, it does. Sheep are about 2 feet to 2  
20 and-a-half feet high. The panels are 4 to 6 feet off  
21 the ground so there's absolutely clearance for the  
22 sheep.

23           And the sheep provide a nice  
24 non-mechanical means of keeping the grass down and  
25 keeping the land in good shape. So that's all good.

1           As I said the property is already used for  
2 cattle grazing. So we're just gonna take cattle  
3 grazing out and probably put sheep in there. Again,  
4 that's the intention. And it will have sort of a nice  
5 symbiotic ability there where the sheep will take care  
6 of the lawn mowing and also meet the needs of the  
7 sheep farmer, and maybe we'll actually have a greater  
8 agricultural production here.

9           So the sheep will be on the property once  
10 the Project is up and in operation. The reason why  
11 there's been, why we tried to write in all of our  
12 materials, it will be sheep or another compatible  
13 agricultural use that ultimately Waipi'o PV LLC,  
14 doesn't have the ability to force somebody to do sheep  
15 farming. They have the legal obligation to make sure  
16 they make this land available. And they make it  
17 available at 50 percent or less than the going rate.  
18 And that's a commitment to give that meaning.

19           Apparently agricultural land on O'ahu  
20 leases for about \$25 an acre. The rate that you've  
21 been talking to Tin Roof Ranch is about \$12 per acre.  
22 So that's, you know, that's what we're talking about  
23 here. It's a more than 50 percent discount.

24           Another thing that Waipi'o learned  
25 throughout this process is that unlike typical

1 agricultural land where maybe the owner is balancing  
2 competing interests, development or other ways of  
3 making use of the land. Because Act 55 requires that  
4 the solar energy facility make the land available for  
5 agricultural use throughout the term, which in this  
6 case means for 35 years or once the operation is  
7 actually going, so between 30, 35 years.

8 That means that the sheep farmer or if it  
9 ultimately winds up being a sheep farmer or a flower  
10 grower, whatever it happens to be, they will be able  
11 to be on that property for that period of time as  
12 well.

13 Apparently because of agricultural lands  
14 and pressure on development, many owners after  
15 agricultural land are not inclined to have long-term  
16 leases. In this case we're very inclined to have a  
17 long-term lease or series of leases because we've got  
18 to keep the land available. The only concern is  
19 making sure that it's a good lessee who's taking care  
20 of the property.

21 Construction, again, will be this  
22 perimeter fencing, and installing the solar panels.  
23 There will be internal roadways which will just be  
24 agricultural roadways, just simple stuff for  
25 maintenance of the solar panels.

1           There'll be an area of -- I don't have  
2   that -- about 2.3 acres which is shown on figure 2 of  
3   the application if anybody cares to see it. But that  
4   area will be -- that will be fenced by a higher fence  
5   about 7 feet high and I think with a foot of barbed  
6   wire around the top of it. Because there's going to  
7   be a HECO switch yard and then also a substation. So  
8   that's where the power will go obviously from the  
9   panels into that area. Then it will connect to a HECO  
10  138 kilovolt line up above. So that needs to be  
11  fenced and kept more protected, or, let's say, even  
12  more difficult to access.

13           Whereas the rest of the property the sheep  
14  will be able to roam pretty freely throughout.

15           Construction is expected to take perhaps  
16  10 minutes give or take. Like I said that the  
17  absolute drop dead deadline is that this Project has  
18  to be operating by the end of 2016. So Waipio PV is  
19  very motivated to keep moving on that.

20           And as you can see obviously there'll need  
21  to be some engineering issues that will be resolved  
22  with the City. But by 'issues' I mean things like  
23  making sure the Best Management Practices are employed  
24  when doing the grade that's necessary.

25           It's a fairly level property. But you

1 still need to make it -- I mean right now it's cattle  
2 grazing. They need to make it where there's some  
3 agricultural roads and safe for PV panels. So there  
4 will be some work on that side.

5           And just thinking is there any other key  
6 elements. Certainly it's all from the proposed D&O.  
7 The panels are built to withstand high winds as  
8 required by the City and County of Honolulu. So  
9 there's no concerns that the panels are going to be  
10 get blown off in any kind of high wind. The City and  
11 County of Honolulu has a Conditional Use Permit  
12 process which any project would have to go through,  
13 even if we were not seeking a Special Permit. And  
14 that's where the City will look and make sure that, in  
15 fact, the visual impacts which the record would show,  
16 will be minimal to non-existent, the City will  
17 actually get a chance to look that much closer and  
18 say, "Okay. That's what we thought from the  
19 beginning. But let's take a better look now. And if  
20 it needs -- some sort of landscaping is needed at that  
21 time and City will make that happen."

22           We mentioned also in the record we did  
23 some study on traffic impacts. Typically traffic  
24 impacts for a Project like where we've got  
25 construction taking maybe 10 months max, would be

1 pretty minimal.

2 In fact, that's what this study found.  
3 But there will be a point because there will be  
4 construction vehicles on the road. Usually they start  
5 at one time and they end at another time where there  
6 will be some impacts from traffic.

7 So what the study did is it looked at what  
8 will this project due to traffic impact-wise without  
9 any mitigation? What will it do with the SunEdison  
10 Waiawa Project which is down the road if the  
11 SunEdison Waiawa Project implements its mitigation?  
12 And then what happens if, since, again, the record  
13 reflected that those two entities were going to be  
14 basically merging the mitigation, the SunEdison  
15 Project was employed. What will that mean for this  
16 Project? And the end result is that the traffic  
17 consultant determined that "no additional mitigations"  
18 were required.

19 There will be a short period of time where  
20 this Project didn't modify the construction work  
21 schedule. Then there would be some delay at the  
22 Project entry on Plantation Road.

23 Obviously that's totally within the  
24 Applicant's control to modify work schedules so that  
25 to ameliorate that kind of concern. The State



1 Department of Transportation Highways Division had no  
2 comments on the Project and neither did the  
3 Transportation Services. So we're not anticipating  
4 any sort of construction traffic issues. And once the  
5 Project's built there's no impacts.

6 Like I said right now it's cattle grazing.  
7 I assume sheep farmers will use the land in a similar  
8 fashion going back and forth on the property and  
9 maintenance of the PV panels is pretty minimal as the  
10 record shows. Maybe once a year they need to be  
11 rinsed off. But rain typically takes care of that.

12 In terms of the decommissioning security,  
13 because that was something that's required under Act  
14 55. And that was something that the record reflects  
15 the Planning Department didn't struggle with, but the  
16 Planning Department was trying to figure out how to  
17 make that work 'cause this is the first time they've  
18 ever been asked the question.

19 The record reflects both in the final  
20 Decision and Order that the Planning Commission issued  
21 and then also our Proposed Decision and Order to your  
22 folks is that the requirement is that within 1 year of  
23 completion of construction or closing of the building  
24 permit. Okay.

25 So that was just to pick a firm point in

1 time. Completion of construction can be a little bit  
2 flakey, hoping that the building permit is really  
3 solid. And so that was the Planning Director's  
4 recommendation.

5 The Applicant will submit to DPP proof of  
6 financial security such as a posted letter of credit  
7 or similar mechanism from a credit-worthy financial  
8 institution in favor of the owner of the land in the  
9 amount of \$4 million. And that security's gotta  
10 remain in place for the duration of the operation of  
11 the Project.

12 And evidence has to be provided to the DPP  
13 director on an annual basis. And that will be used to  
14 restore the Petition Area to substantially the same  
15 condition that it's in right now before the Project  
16 gets implemented.

17 So that's the proof. The Planning  
18 Commission heard the Planning Director say that that  
19 was adequate. That's what the Planning Commission  
20 wants to see from this Applicant at the close of  
21 building permit and every year thereafter.

22 I guess I'll touch very briefly on the  
23 criteria for the Special Use Permit just to make sure  
24 that we've gone over that and then, again, I'll open  
25 up for questions.

1 But the Special Use Permit criteria that  
2 the Land Use Commission looks at is real similar.  
3 It's pretty much to what the Planning Commission looks  
4 at. And it's, as I said, is the use unreasonable --  
5 I'm sorry -- is the use 'unusual' and reasonable?

6 And the guidelines are that: The use  
7 shall not be contrary to the objectives sought to be  
8 accomplished by Chapters 205 which is the State Land  
9 Use Law and 205A which is the Coastal Zone Management  
10 Act. So I won't go into detail because it's all in  
11 the Proposed D&O and also in the Director's report.

12 But clearly there's nothing inconsistent  
13 with the objectives of Chapter 205. The very essence  
14 of this Project is it will promote agricultural  
15 activity on Ag land, but also making it available for  
16 solar energy facilities. It's not inconsistent with  
17 205(a). For one thing the property is nowhere within  
18 the Special Management Area which is a part of Chapter  
19 205(a) that requires really close scrutiny. But  
20 second, 205(a) promotes a lot of public participation.  
21 This Project has been available for public  
22 participation for months and months, and months even  
23 before the Application was filed. Presentations had  
24 been made to neighborhood boards.

25 Two or three neighborhood boards and

1 numerous meetings had been had with community groups  
2 as well as with legislators just to make sure the  
3 public participation was thorough because, frankly,  
4 nobody wants a surprise.

5           And if there were issues, those issues  
6 could be better addressed before an application  
7 actually gets filed. And what the record reflects is  
8 there was no intervention. There's been nothing  
9 against the Project submitted. There has been support  
10 for the Project from Castle & Cooke, from Blue Planet,  
11 from PRP, and then one of the neighborhood boards also  
12 passed resolutions in support of the Project. So in  
13 that way -- I'm sorry, two boards -- in that way it's  
14 clearly consistent with that objective of Chapter 205.

15           Proposed use would not adversely affect  
16 surrounding property. We already addressed traffic  
17 which there will be a brief time during construction  
18 where there will be some impacts. The impacts are  
19 primarily on the private road, Plantation Road, that's  
20 owned by Castle & Cooke. And, again, those could be  
21 ameliorated through just management of the work  
22 schedule which was that much easier now that First  
23 Wind and SunEdison are the same company.

24           In terms of other adverse impacts, well,  
25 it's cattle grazing right now. It will be solar, you

1 know, probably quite, maybe a little bit smelly, I  
2 don't know, but it's surrounded by other agricultural  
3 uses. There's not residential use around.

4 So there's no indication that there would  
5 be any adverse affect to surrounding properties.

6 The proposed use, again I'm looking at the  
7 criteria in the LUC rules: Proposed use would not  
8 unreasonably burden public agencies to provide roads,  
9 schools, sewers, water, drainage and school  
10 improvements and police and fire protection.

11 So I think everything I've said has  
12 demonstrated that. There's no -- there's no burden on  
13 public agencies whatsoever. There's not public water  
14 sources going to this property right now. There's  
15 agricultural water sources for the cattle and that's  
16 all that there will continue to be. Fire Department  
17 said they're gonna want to look at the building plans.  
18 And we hope that that's not an issue whatsoever.

19 Through the use of the sheep and actually  
20 having this land in the mix of solar and sheep, it'll  
21 actually reduce the chances of wild fire because the  
22 land will be better cultivated.

23 Really with the cattle on there it's not  
24 high risk for wildfires in any event. There's no  
25 drainage. There's no school. There's no police

1 issues with this whatsoever.

2 Another criteria is Unusual Trends and  
3 needs have arisen since the District Boundary  
4 Amendment rules were first established. Unusual  
5 Trends was Act 55. Act 55 recognized that, yes, we  
6 can let solar energy facilities exist on LSB-rated  
7 soils.

8 The lands upon which the proposed use is  
9 sought is unsuited for the uses permitted within the  
10 district. That's actually a guideline that we don't  
11 fit into because the land is suited for agriculture  
12 production, but it's also equally as suited for the  
13 solar energy facility.

14 So the Planning Commission had determined  
15 that we met those criteria. I hope this Commission  
16 feels that the record accurately reflects that and  
17 you'll be able to make a similar determination. And,  
18 again, the criteria under Act 55 about decommissioning  
19 and providing the lease rent at 50 percent or less and  
20 the financial security to back up the promise of  
21 decommissioning. And with that I'll open it up for  
22 any questions.

23 CHAIRPERSON McDONALD: Thank you, Ms. Lim.  
24 Commissioners, any questions for the Applicant?  
25 Commissioner Song.

1                   COMMISSIONER SONG: Yes. Mrs. Lim, you  
2 explained in detail the additional criteria and gave  
3 us an analysis of the additional criteria required for  
4 the Special Permit. I can't recall how you explained  
5 or gave us an analysis on why this Project is a  
6 reasonable and usual use under Section 205(6) Hawaii  
7 Revised Statutes. So can you give us a brief  
8 explanation of that?

9                   MS. LIM: Sure. Thank you, Commissioner  
10 Song. In fact the reasonable and unusual use, the  
11 guidelines for determining what that is are the  
12 guidelines I was just discussing some of which is:  
13 What is it that we look at? Is it going to be -- let  
14 me be clear.

15                   The rule that I'm looking at, the  
16 Commission rule that I'm looking at is 15-15-95. And  
17 under 15-15-95 part (C) it says, "Certain unusual and  
18 reasonable uses in the Agricultural and Rural District  
19 other than those for which the district is classified  
20 may be permitted. The following guidelines are  
21 established in determining an unusual and reasonable  
22 use.

23                   That's where, then, No. 1 is that it's not  
24 contrary to the objectives of Chapter 205 or Chapter  
25 205(a) that the proposed use would not adversely

1 affect the surrounding properties, the burdening of  
2 the public agencies, unusual conditions, et cetera.  
3 So that's the guideline criteria.

4           And unusual and reasonable use it really  
5 -- we've already addressed the specific criteria. But  
6 when you look at Act 55 I think it actually says it  
7 may be in a tighter, cleaner way which is Act 55 says,  
8 "You can do solar energy facility but only on a very  
9 limited acreage unless you get a Special Permit. So  
10 there's no question that you can do solar energy  
11 facilities.

12           It's just if you want to do a big one  
13 you've got to get a Special Permit and you've gotta  
14 meet those additional criteria that's the name, blah,  
15 blah, blah.

16           The unusual and reasonable use then we  
17 would say: Is this consistent with Chapter 205? I'd  
18 say Act 55 demonstrates that this solar energy  
19 facility *is* consistent with Act 205 because the whole  
20 purpose of this law was to say, "Yeah, you can do  
21 larger solar energy facilities as long as you make  
22 sure that you're providing the land, making it  
23 available for agricultural uses at a certain kind of  
24 rate, that you make sure you're gonna decommission the  
25 solar energy facilities and that you're gonna restore



1 the land in substantially the same condition.

2 So that's the way I believe that we meet  
3 that first guideline, and demonstrate that it is  
4 unusual, reasonable use.

5 As for the second criteria determining  
6 unusual, reasonable use. As I mentioned will this use  
7 adversely affect surrounding properties? There's  
8 been -- Petitioner I believe has met the burden of  
9 demonstrating there will not be an adverse effect on  
10 surrounding properties because surrounding properties  
11 are agricultural properties.

12 The nearest residential property is a  
13 couple of miles away. It's in the record, maybe 2,  
14 2.2 miles away, something like that. But the  
15 surrounding landowners are agricultural landowners.

16 And right now the property is in cattle  
17 grazing. It will be in a similar agricultural use  
18 once the solar energy facility is there. So having  
19 the solar energy facility there, in and of itself,  
20 won't adversely affect surrounding property owners  
21 because it's an entirely passive use of the land.  
22 Again, going back to that third criteria about the  
23 burden on public agencies to provide roads. Well,  
24 there's absolutely no burden on public agencies to  
25 provide roads whatsoever. There's not -- this isn't a

1 use that's gonna require a lot of people. I mean once  
2 it's built there will be one or two people coming to  
3 operate it. That's really it.

4 And then there'll be whatever the  
5 agricultural producer's doing, which is the same as  
6 what the current cattle grazer is doing. Streets,  
7 sewers, again there's no residential use here. Nobody  
8 is trying to even put a farm dwelling on the property  
9 so there's not going to be any sewer demands.

10 Water, drainage and school improvements,  
11 again water right now is available for the cattle.  
12 The same water will be available for the sheep. There  
13 will be no need for additional water for the solar  
14 panels. To the extent there is the Applicant, as it  
15 shows, will truck the water onto the property for  
16 that. No need for schools because there's no people  
17 involved.

18 And police and fire protection, if  
19 anything, the property will be somewhat more protected  
20 by a perimeter fence. Fire protection, as I  
21 mentioned, the chances of wildfire are not high right  
22 now but are reduced even more once you've got sort of  
23 active management through the sheep farming or whoever  
24 else is on there. So again I'm just going back down  
25 that list of the guidelines for what demonstrates

1 unusual and reasonable use. But maybe you had a more  
2 specific question?

3 COMMISSIONER SONG: I just want to be  
4 clear. You would agree that because you have gone  
5 through all these criteria, the 5 criteria under  
6 Section 15-15-95 of the Administrative Rules, you've  
7 met the standard for unusual and reasonable uses for  
8 this Project.

9 MS. LIM: I would agree with that,  
10 Commissioner. And if I may, not to be overly  
11 detailed, but the Planning Commission also has a rule.  
12 I think it's 2.4. I just don't want to give the  
13 appearance that I'm discounting the City Planning  
14 Commission's role. But it's the same criteria. It's  
15 the same language.

16 COMMISSIONER SONG: Thank you.

17 CHAIRPERSON McDONALD: Thank you,  
18 Commissioner Song. Commissioners, any other questions  
19 for the Applicant?

20 COMMISSIONER WONG: The only question I  
21 have is I know we have a deadline of 2016. The issue  
22 is the SHPD, State Historic... where is that? Do you  
23 know what the status?

24 MS. LIM: I do, Commissioner Wong. The  
25 record is closed. So let me tell you what I know I

1 can freely tell you because it's wholly within the  
2 record. Okay? Which is the Archaeological Assessment  
3 was submitted to SHPD in August. Bob Rechtman is the  
4 consultant who did that work. He testified at the  
5 Planning Commission -- and the report itself is in the  
6 application -- that there was absolutely no  
7 indication. There was no expectation or indication  
8 that there would be any historic properties found  
9 within this site.

10           There had been studies done by actually  
11 Castle & Cooke when they were originally looking at  
12 doing the Koa Ridge Project that specifically covered  
13 this property. But in any event that's a separate  
14 matter. It's just he had every confidence that there  
15 was nothing, no historic sites on the property. He  
16 never listed a 100 percent pedestrian survey and then  
17 submitted to SHPD in August or perhaps early  
18 September.

19           By the time we were at the Planning  
20 Commission, which was on December 17, SHPD had not yet  
21 issued a determination. In fact even when we were  
22 there on January 7th for the final decision they had  
23 not yet issued a determination. So I could tell you  
24 what happened after that, but the record officially  
25 closed.

1           So what I don't think anybody objected to  
2 my saying is that when the Office of Planning in *their*  
3 comments suggested, consistent with what they had said  
4 in response to the application in the first place,  
5 that construction shouldn't begin until SHPD approval  
6 is authorized or issued on the Applicant has  
7 absolutely no objection and has every confidence that  
8 that condition would not be a problem whatsoever. But  
9 as of the date that the record closed we had not yet  
10 received the official SHPD letter.

11           CHAIRPERSON McDONALD: So as of today have  
12 you received any responses from SHPD regarding the  
13 Archaeological Assessment? Just for our information.

14           MS. LIM: Yes. Yes, Chair, we did.

15           CHAIRPERSON McDONALD: Thank you. Any  
16 further questions from the Commissioners?  
17 Commissioner Hiranaga.

18           COMMISSIONER HIRANAGA: Good morning.  
19 Just for clarity. I believe the nearest residential  
20 area, Mililani Mauka, is a half a mile from the  
21 Project. I think you may have stated a further  
22 distance.

23           MS. LIM: You're right. Thank you for  
24 that correction. I think I said 2.1 miles.

25           COMMISSIONER HIRANAGA: Right. And also

1 for clarity you mentioned an Ag rate of \$25 an acre.  
2 Just wanted to know if that's per year.

3 MS. LIM: Yes. It's \$25 per acre per  
4 year.

5 COMMISSIONER HIRANAGA: Thank you.

6 CHAIRPERSON McDONALD: Any further  
7 questions? Commissioner Mahi.

8 COMMISSIONER MAHI: I know you had made  
9 some comments about community groups in the positive  
10 and the alterations that were being considered for  
11 that. Can we get some reports on that, the minutes on  
12 those meetings? I'd like to know which of the  
13 neighborhood boards had commented and some of the  
14 comments that were made. And are there any other  
15 organizations that have responded, other community  
16 groups in the area that either spoke for it or against  
17 the Project?

18 MS. LIM: Thank you, Commissioner Mahi.  
19 If I can, maybe the one place to direct you, there's a  
20 lot of different things in the record, but the City's  
21 Exhibit 19, which the City's Exhibit 19 had all of our  
22 written direct testimony and a lot of other things in  
23 it. Ms. Crystal Kua's written direct testimony, which  
24 is our Exhibit 20, and again that's within the City's  
25 Exhibit 19, I have in front of me.

1           If you'd like I can read through some of  
2 the community outreach and the responses that's in  
3 that document. I will say to you that there was  
4 absolutely no opposition expressed by any individual  
5 or group or anybody about the Project. But I'd be  
6 happy to either direct you to that or even give you  
7 rehash.

8           COMMISSIONER MATSUMURA: Maybe later. I  
9 just wanted to make sure there was something I could  
10 read in the record. Agency names.

11          MS. LIM: Certainly.

12          COMMISSIONER MAHI: People who have been  
13 involved in responding.

14          MS. LIM: Certainly. Ms. Kua's testimony  
15 was quite eloquent on that. I think you'll also find  
16 in the Planning Director's report, which was filed as,  
17 I think it's Exhibit -- I'll get you the Exhibit No.  
18 in a moment, but the Planning Director's also runs  
19 through that.

20          COMMISSIONER MAHI: Okay. Thank you.

21          CHAIRPERSON McDONALD: Okay. At this time  
22 I'm going to request for a -- excuse me. Can't be a  
23 recess. Before we go on, Commissioner Hiranaga.

24          COMMISSIONER HIRANAGA: Just a  
25 hypothetical question. So you're charging the sheep

1 grazer approximately \$700 a year. What happens if the  
2 grass is not plentiful enough to make this a sheep  
3 grazing enterprise feasible over this period of time?  
4 Does that still meet the criteria?

5 If he defaults because the sheep aren't  
6 being fed enough, it's just not making economic sense,  
7 what happens to that requirement of leasing about  
8 50 percent rate? There's a contingency?

9 MS. LIM: Well, the requirement is that it  
10 always has to be made available. But I think your  
11 point is going, you know, what's your good faith. I  
12 mean are you going to meet the spirit? Are you just  
13 going to make some sort of technical requirement on  
14 the language? If I could, attached within the Special  
15 Use Permit application, which that's Exhibit 1 that  
16 the City submitted, there was a study included in  
17 there as attachment 6 that specifically looked at the  
18 sheep farming. Is this viable? Okay. And  
19 specifically looked at how much space is needed for  
20 the sheep.

21 I believe that between that and the  
22 Department of Agriculture's comments on the Special  
23 Permit Special application which is also in there in  
24 the record. The property, the 308, 309 acres was  
25 determined to be, could hold between a hundred to 200



1 sheep easily. And in contrast what does it take? How  
2 much pasture is needed for a cow, which is a thousand  
3 pound cow, takes 2 acres of pasture. So sheep are  
4 significantly smaller. I mean they weigh a whole lot  
5 less. This site could easily, it easily has enough  
6 forage for 200 sheep as is.

7 So the analysis was done to demonstrate  
8 that the property would be, could easily manage the  
9 sheep. May I allow the Applicant?

10 CHAIRPERSON McDONALD: Yes, sure.

11 MS. LIM: As long as we're staying within  
12 the record.

13 MR. WESCOATT: This is Wren Wescoatt from  
14 Sun Edison. We also -- the report addressed that  
15 because the solar panels would be shading, providing  
16 more shade than an open pasture, the stocking, the  
17 resulting forage would likely be less. So the  
18 stocking density of the sheep would have to be less  
19 than a panel -- a field that was completely open. So  
20 the estimate we had in there takes that into account.

21 COMMISSIONER HIRANAGA: Follow up  
22 question?

23 CHAIRPERSON McDONALD: Sure.

24 COMMISSIONER HIRANAGA: So I'm not sure  
25 what the market rate is for sheep. The rancher, if

1 you call him, is a sheep rancher, feels confident he  
2 can meet the financial requirements for the lease  
3 payments by the number of sheep that he's able to  
4 raise on the property? Because if it's not  
5 financially viable then he won't be able to pay his  
6 rent and the property goes fallow.

7 THE WITNESS: We did discuss all that with  
8 the interested Applicant and then entered into a  
9 Letter of Intent which is also included.

10 COMMISSIONER HIRANAGA: So you're  
11 satisfied that he will be able to make a go of it.

12 MR. WESCOATT: Yes.

13 COMMISSIONER HIRANAGA: Thank you. No  
14 further questions.

15 CHAIRPERSON McDONALD: Thank you,  
16 Commissioner Hiranaga. Last call for any questions  
17 for the Applicant.

18 COMMISSIONER AHAKUELO: I have a question.

19 CHAIRPERSON McDONALD: Commissioner  
20 Ahakuelo.

21 COMMISSIONER AHAKUELO: Ms. Lim, you  
22 mentioned that HECO would build a baseyard-- sorry,  
23 switch yard on the property. So is that, just for  
24 clarification is that part of the Project itself?

25 MS. LIM: That is such a good question.

1 And I apologize that I didn't make this clear in the  
2 first place. Yes. It is part of the Project meaning  
3 that that is what is part of what will be constructed  
4 within this Petition Area, the Special Use Permit  
5 area. But that component will be constructed by HECO.  
6 And that component may not be removed as part of the  
7 decommissioning. That, in fact, would be allowed  
8 under Chapter 205 within the State Land Use  
9 Agricultural District in any event.

10 But, yes, it is. It's part of this  
11 Project. But we're not building it. That will stay  
12 within the property into whenever such time that HECO  
13 determines it's time to take it away.

14 COMMISSIONER AHAKUELO: Okay. Thank you.

15 CHAIRPERSON McDONALD: Thank you. Before  
16 we move onto public testimony with the county and  
17 State Office of Planning requests a 10-minute recess,  
18 reconvene thereafter.

19 (Recess was held. 10:40-10:55)

20 CHAIRPERSON McDONALD: Back on the record.  
21 County, do you have any opinions at this time?

22 MR. LEWALLEN: The director does not.  
23 Thank you, Chair.

24 CHAIRPERSON McDONALD: State Office of  
25 Planning, do you wish to offer any public testimony at

1 this time?

2 MR. FUNAKOSHI: Yes.

3 CHAIRPERSON McDONALD: Mr. Funakoshi,  
4 since you're a public witness I need to swear you in.

5 RODNEY FUNAKOSHI  
6 being first duly sworn to tell the truth, was examined  
7 and testified as follows:

8 THE WITNESS: Yes.

9 CHAIRPERSON McDONALD: Please proceed.

10 MR. FUNAKOSHI: My name is Rodney  
11 Funakoshi. I'm with the State Office of Planning. I  
12 did wish to summarize our review of the Special Permit  
13 as well as the proposed conditions we are  
14 recommending. So we did review the City's Special  
15 Permit Application upon referral from the City  
16 Department of Planning and Permitting. I do wish to  
17 point out that the site was previously reviewed by the  
18 Commission as part of the Koa Ridge Mauka development  
19 in the early 2000s.

20 But this classification to the Urban  
21 District was denied by the State Land Use Commission  
22 in 2002. So the land has since remained in the State  
23 Agricultural District and is zoned by the City as Ag 1  
24 restricted agricultural zoning.

25 Overall the Office does not have

1 objections to the solar farm operation as proposed in  
2 this location. We do have statewide concerns with  
3 regards to seeking a balance in maintaining the  
4 availability of high quality agricultural lands while  
5 promoting renewable energy resources on lands within  
6 the Agricultural District. And as noted by the  
7 Petitioner the lands here are very good quality soils  
8 both under the Agricultural Lands of Importance to the  
9 State of Hawai'i as well as the Land Study Bureau  
10 ratings.

11           We do concur, however, that the impacts  
12 from the solar operations have been addressed by the  
13 Applicant and there does not appear to be any major or  
14 long-term adverse effects on the surrounding area. We  
15 also note that the requirements relative to their  
16 recent revisions, the statute have been addressed by  
17 the Petitioner and the City in their recommended -- in  
18 their proposed conditions of approval.

19           So we certainly concur with the proposed  
20 conditions along those lines. There are several  
21 conditions that the Office of Planning does wish to  
22 offer for consideration. I would point out that in  
23 other Special Permits the Land Use Commission has  
24 generally required by condition that applicants  
25 substantially comply with representations made to the

1 County and to the LUC. So we recommend that this  
2 condition be imposed here as well.

3 This condition would read: In compliance  
4 with representations the Petitioner shall develop the  
5 property in substantial compliance with the  
6 representations made to the Commission in obtaining  
7 the State Land Use Commission's Special Use Permit and  
8 the City and County of Honolulu Planning Commission in  
9 obtaining the SUP. Failure to so develop the property  
10 may result in revocation of the permit.

11 We had also recommended in view of the  
12 absence of archaeological approval from the State  
13 Historic Preservation Division that a condition be  
14 imposed that: The Petitioner shall obtain approval of  
15 the archaeological assessment dated August 2014 from  
16 the State Historic Preservation Division prior to  
17 commencement of construction of the solar farm.

18 There's also a longer condition regarding  
19 previously unidentified burials and archaeological  
20 historical sites. That is a fairly standard condition  
21 but I won't read it. But we also recommend that this  
22 be imposed. These conditions have been discussed with  
23 Petitioner and they have not had any objections to  
24 these conditions. So with that that's all I have to  
25 say. Thank you.

1                   CHAIRPERSON McDONALD: Thank you,  
2 Mr. Funakoshi. Commissioners, any questions for the  
3 State Office of Planning or the County at this time?  
4 Hearing none, I'd first like to thank Mr. Lewallen and  
5 the County as well as the Applicant for sending up  
6 such a thorough and complete record for the LUC to  
7 review.

8                   Also I'd like to thank the State Office of  
9 Planning for your diligence and review in providing  
10 comments to the application. So with that,  
11 Commissioners, what's your pleasure on this matter?

12                  COMMISSIONER WONG: Mr. Chair, I would  
13 like to move to approve the recommendation of the  
14 Planning Commission approving the Special Permit for a  
15 47 megawatt solar farm on the subject property subject  
16 to the 9 conditions recommended by the Planning  
17 Commission; amend Condition 6 to include OP and Land  
18 Use Commission; include conditions as recommend by the  
19 Department of Transportation and Office of Planning  
20 and accept the Applicant's proposed Findings of Fact,  
21 Conclusions of Law and Decision and Order with changes  
22 to be made by staff and procedural matters.

23                  CHAIRPERSON McDONALD: We have a motion by  
24 Commissioner Wong. Do I have a second?

25                  COMMISSIONER SONG: Second.

1 CHAIRPERSON McDONALD: Second by  
2 Commissioner Song. Any discussion? Seeing none,  
3 Mr. Orodenger can you please poll the Commission.

4 MR. ORODENGKER: Thank you, Mr. Chair.  
5 The motion is to approve the recommendations of the  
6 Planning Commission with stated amendments.  
7 Commissioner Wong?

8 COMMISSIONER WONG: Aye.

9 MR. ORODENGKER: Commissioner Song?

10 COMMISSIONER SONG: Aye.

11 MR. ORODENGKER: Commissioner Mahi?

12 COMMISSIONER MAHI: Aye.

13 MR. ORODENGKER: Commissioner Scheuer is  
14 excused. Commissioner Aczon?

15 COMMISSIONER ACZON: Aye.

16 MR. ORODENGKER: Commissioner Hiranaga?

17 COMMISSIONER HIRANAGA: Aye.

18 MR. ORODENGKER: Commissioner Ahakuelo?

19 COMMISSIONER AHAKUELO: Aye.

20 MR. ORODENGKER: Commissioner Clendinn?

21 COMMISSIONER CLENDINN: Aye.

22 MR. ORODENGKER: Chair McDonald?

23 CHAIRPERSON McDONALD: Aye.

24 MR. ORODENGKER: Thank you, Mr. Chair. The  
25 motion passes unanimously.



1                   CHAIRPERSON McDONALD: Thank you,  
2 Mr. Orodenker. Thank you to the parties, the  
3 Applicant. And also want to actually commend you  
4 folks in your folk's initiative in support of the  
5 state's renewable energy efforts. And best of luck  
6 with your Project.

7                   MS. LIM: Thank you very much, Chair and  
8 Commissioners.

9                   CHAIRPERSON McDONALD: Okay. Thank you.  
10 The next item on the agenda is Legislative Status  
11 Report.

12                  MR. ORODENKER: Thank you, Mr. Chairman.  
13 I'd just like to note that all the bills that we were  
14 tracking concerning the Land Use Commission,  
15 particularly those bills in the Senate, have not  
16 survived. There are a number of bills that we were  
17 tracking prior and are still in play.

18                  CHAIRPERSON McDONALD: Why don't we take a  
19 quick 5 minute recess while the room clears out.  
20 (recess)

21                  CHAIRPERSON McDONALD: Back on the record.  
22 Mr. Orodenker.

23                  MR. ORODENKER: The bills regarding the  
24 Land Use Commission that concerned either elimination  
25 of the Land Use Commission or curtailment of our

1 powers have all failed to pass and have been filed as  
2 dead. The other bills that we were tracking, the ones  
3 we mentioned at our last hearing, there are some of  
4 them that are still alive. We just continue to  
5 maintain our testimony as expressed to the Commission  
6 at that point. There's nothing new happening that  
7 we're aware of.

8 CHAIRPERSON McDONALD: Any questions from  
9 the Commissioners regarding any legislative bills?  
10 (no response) Okay. Great. So with that we're  
11 adjourned.

12 COMMISSIONER MAHI: I have a question.  
13 Are we going to have the 25th since we took that  
14 action today?

15 MR. ORODENKER: That's the approval of the  
16 Order. So we do have to have another meeting to  
17 approve the Order.

18 CHAIRPERSON McDONALD: That will be via  
19 video conference.

20 MR. ORODENKER: That's correct.

21 CHAIRPERSON McDONALD: Okay. We're  
22 adjourned.

23

24 (The proceedings were adjourned at 11:05 a.m)

25

--oo00oo--

## C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State  
of Hawai'i, do hereby certify;

That I was acting as court reporter in the  
foregoing LUC matters on the 5th day of March 2015;

That the proceedings were taken down in  
computerized machine shorthand by me and were  
thereafter reduced to print by me;

That the foregoing represents, to the best  
of my ability, a true and correct transcript of the  
proceedings had in the foregoing matters.

DATED: This\_\_\_\_\_ day of\_\_\_\_\_2015

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HOLLY M. HACKETT, HI CSR #130, RPR #5910  
Certified Shorthand Reporter